

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

**Case No. 00-CR-242
04-CV-718**

-vs-

WILLIE NEWTON, JR.,

Defendant.

DECISION AND ORDER

The Movant, Willie J. Newton (“Newton”), has brought a motion captioned “Motion Seeking Relief Pursuant to Fed. Rules Civ Proc. 60(b) (1) through (6) ‘Fraud Upon the Court.’” Newton is currently serving a life sentence in federal prison after a jury conviction for drug trafficking. Newton’s sentence was affirmed on appeal. Newton also filed a motion attacking his sentence under 28 U.S.C. § 2255. This motion was summarily dismissed by the Court on October 25, 2004. *See* Decision and Order, Case No. 04-C-718 (Docket No. 5).

Newton’s motion, although styled as a motion under Rule 60, must be construed as a motion under Section 2255, as it attacks the constitutional validity of his prison sentence. *See* 28 U.S.C. § 2255 ¶ 1; *see also United States v. Evans*, 224 F.3d 670, 672 (7th Cir. 2001). As noted above, Newton previously filed a motion under Section 2255. Therefore, the present motion is a “second or successive” petition as defined by 28 U.S.C. § 2255 ¶ 8. Because Newton failed to obtain appellate approval prior to filing the instant motion pursuant to § 2255 ¶ 8, it must be dismissed for lack of jurisdiction. *See Evans* at 672 (any post-judgment motion in a

criminal proceeding that fits the description of § 2255 ¶ 1 is a motion under § 2255 . . . the second (and all subsequent) of these requires appellate approval).

_____ **NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:**

Newton's motion [Docket No. 194] is **DISMISSED** for lack of jurisdiction.

Dated at Milwaukee, Wisconsin, this 26th day of October, 2006.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge